



UNITED STATES | ENGLAND | CHINA

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January 31, 2011

The Honorable Jeanne J. Graham
United States Magistrate Judge
342 Federal Building
316 N. Robert Street
St. Paul, MN 55101Re: *TimeBase Pty Ltd. v. The Thomson Corp., et al.* / Civ. No. 07-1687 (JNE/JJG)

Dear Judge Graham:

In response to Your Honor's Order of January 26, 2011, defendants submit this letter to respectfully request that the pretrial schedule be adjusted for good cause to take into account the Court's recent claim construction rulings and to provide the parties with adequate time in which to narrow the issues based on these rulings, prepare expert reports that apply these rulings, and submit dispositive motions based on these rulings and the parties' experts reports. Defendants appreciate the Court's consideration of these issues. Defendants originally raised these issues with Judge Ericksen because they had come up at the Markman hearing as potential issues that the Court might need to address.

Your Honor last addressed the scheduling issues in this case in August 2010, when Your Honor adopted the parties' joint recommendations for re-setting the fact discovery deadlines and the expert discovery schedule. At that time, the parties also submitted different proposed dates for the dispositive motion deadline and for the trial-ready date. Your Honor left the original dates in place for both of those deadlines.

In view of the complex nature of the issues in this case, Judge Ericksen issued her Markman Order only ten days ago on January 21, 2011. As explained below, because defendants must make strategic decisions based on these rulings and their experts must now analyze, apply, and prepare expert reports to 109 different asserted claims based on these rulings, defendants believe they will need a reasonable amount of additional time beyond the current deadline of February 7, 2011 to complete this work. In addition, because the summary judgment deadline is currently scheduled for February 4, 2011—which is only four days from now and which is before defendants will have received any of plaintiff's expert reports—defendants ask that the dispositive motion deadline be moved until after the close of expert discovery as is typical in a patent case. This change is especially necessary because under Local Rule 7.1(b),

challenges to experts must be made as dispositive motions. Defendants therefore must be able to receive plaintiff's expert reports and conduct expert discovery before such challenges can be made. Finally, given these modifications, defendants believe the trial-ready date should also be adjusted so that the parties can adequately prepare for trial after dispositive motions have been decided. Each of these issues is addressed in more detail below.

Expert Discovery Deadlines. The current schedule requires the parties to submit expert reports on the issues on which they bear the burden of proof on February 7, 2011, which is one week from today. Plaintiff's initial expert reports will address issues of infringement and damages, and defendants' initial expert report will address invalidity. As the Court knows, this case involves complicated software and database technology. Plaintiffs have thus far asserted all 109 claims from the patents-in-suit against four different accused products, and defendants' have countered with both non-infringement defenses and invalidity contentions addressing more than 50 items of prior art. Until ten days ago, the parties did not know how the Court would construe the various claims at issue. This uncertainty regarding the meaning of the patent claims prevented the parties from meaningfully narrowing the issues remaining to be decided on summary judgment and at trial. Judge Ericksen's claim construction rulings have now presented the parties with an opportunity to reconsider their respective contentions—plaintiffs will reconsider which of the 109 patent claims it will assert, and defendants will reconsider which of their invalidity arguments they will pursue. A reasonable extension of the expert deadlines would allow the parties to make strategic decisions aimed at narrowing the case into a more manageable posture as they prepare expert reports and move towards trial.

In addition, defendants' experts (and indeed, all of the experts) will need to analyze the Court's claim construction rulings and then apply the Court's constructions when rendering their expert opinions. Although defendants have been diligently analyzing their strategic options and working with their experts in anticipation of the Court's ruling, defendants and their experts will need at least some additional time in which to complete their strategic analysis, finalize their opinions, and prepare written expert reports that incorporate the Court's claim construction rulings. Accordingly, defendants respectfully request a short extension of three weeks for each of the expert deadlines so that the parties and their experts can fairly and reasonably complete their work.

Dispositive Motion Deadline. The current dispositive motion deadline is set for this coming Friday, February 4, 2011. In the original pretrial scheduling order, this deadline was set for *after* the close of expert discovery, which is typical for cases involving expert testimony. Indeed, the parties must have the benefit of the position of each other's experts before they can frame their summary judgment arguments. Furthermore, under the current Local Rules for this district, challenges to experts are to be made as dispositive motions after expert discovery has been completed. D.Minn. LR7.1(b).

When the Court adopted the parties' revised dates for expert discovery, the dispositive motion deadline did not get moved back. Accordingly, the current deadline simply does not give defendants a reasonable time to consider and apply the Court's Markman rulings, nor does it allow defendants time in which to learn plaintiff's full positions on infringement and damages

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before they would be required to submit summary judgment motions. The current deadline also would not allow defendants to challenge plaintiff's experts at the time of the dispositive motion deadline as required under the Local Rules. Because these circumstances would create an unfair advantage to plaintiff, defendants respectfully request that the dispositive motion deadline be moved until after the close of expert discovery, which was where it had been set in the original pretrial order.

Trial-Ready Date. In view of the modifications to the pretrial schedule being requested by defendants, the trial-ready date also would need to be adjusted. Because the Court will need a reasonable amount of time in which to rule on dispositive motions and the parties will thereafter need to modify their trial strategies based on these rulings, defendants request that the trial-ready date be moved until this fall.

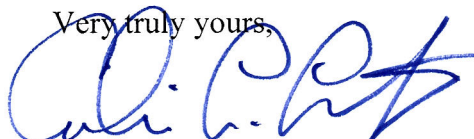
With the extensions requested by defendants, the remaining pretrial and trial-ready dates would be set as follows:

	<u>Current Deadline</u>	<u>Proposed Deadline</u>
Initial expert reports	February 7, 2011	February 28, 2011
Rebuttal expert reports	March 11, 2011	April 1, 2011
Close of expert discovery	April 29, 2011	May 20, 2011
Non-dispositive motions for expert discovery	May 13, 2011	June 2, 2011
Dispositive motion deadline	February 4, 2011	July 8, 2011
Trial-ready date	June 1, 2011	November 7, 2011

The proposed adjustments requested by defendants are reasonable given the complexity of the case, the timing of the Court's Markman rulings, and the need to have a fair opportunity to challenge plaintiff's experts and narrow the issues for trial. In view of these needs, defendants believe there is good cause to make the adjustments they are requesting, and respectfully request that the Court adopt defendants' proposed revised schedule.

Defendants appreciate the Court's consideration of this matter.

Very truly yours,



Calvin L. Litsey

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cc: Joseph Hosteny

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